

07-14-62

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April 9, 1987

Arnold Schiff  
 New Jersey Department of Environmental  
 Protection  
 Division of Hazardous Waste Management  
 Bureau of Compliance and Technical Services  
 CN 028  
 Trenton, NJ 08625

Re: In the Matter of Frey Industries,  
 Tilghman B. Frey, President  
 29 River Avenue  
 Newark, NJ

Dear Mr. Schiffman:

We serve upon you Notice of Hearing in the  
 above-captioned matter.

Very truly yours,

  
 GARY S. REDISH

GSR:sc

Encl.

VIA CERTIFIED MAIL RRR and HAND DELIVERY

RECEIPT IS HEREBY ACKNOWLEDGED THIS 10TH DAY OF APRIL, 1987.

By ARNOLD SCHIFF

COLE, GEANEY, YAMNER & BYRNE, ESQS.  
100 Hamilton Plaza  
P.O. Box D  
Paterson, NJ 07509  
(201) 278-0500

ATTORNEYS FOR: Frey Industries, Inc.  
and Tilghman B. Frey Petitioners

NOTICE OF HEARING REQUEST  
PURSUANT TO N.J.S.A.  
52:148-1 et seq. AND  
N.J.S.A. 13:1E-9 FROM  
ADMINISTRATIVE ORDER AND  
NOTICE OF CIVIL ADMINISTRATIVE  
PENALTY ASSESSMENT

IN THE MATTER OF FREY :  
INDUSTRIES, TILGHMAN B. :  
FREY, PRESIDENT :  
29 Riverside Avenue :  
Newark, NJ :  
:  
:  
:

TO: ARNOLD SCHIFF  
New Jersey Department of Environmental  
Protection  
Division of Hazardous Waste Management  
Bureau of Compliance and Technical Services  
CN 028  
Trenton, NJ 08625

SIR:

PLEASE TAKE NOTICE, that the undersigned attorneys  
for Frey Industries, Inc. and Tilghman B. Frey, Petitioners  
hereby request a hearing pursuant to N.J.S.A. 52:14B-1  
et seq. and N.J.S.A. 13:1E-1 from the Administrative Order  
and Notice of Civil Administrative Penalty Assessment  
issued on March 19, 1987 for the reasons set forth below.

Petitioner relies upon N.J.S.A. 52:14B-9 (b) and N.J.A.C. 1:1-6.1 (b).

(a) Frey Industries, Inc. has never been engaged in the business commonly referred to as a "hazardous waste facility". Frey is engaged in the business of handling "virgin" chemicals many of which are "red label" materials and therefore "hazardous materials" as defined by various sections of the New Jersey Administrative Code.

Apparently, some years ago Jobar Industries obtained a United States Government Identification Number to conduct the business commonly known as a hazardous waste facility and was issued EPA I.D. #NJD000729728 by the United States Environmental Protection Agency. In or about 1980, Tilghman B. Frey became a principal of Jobar. He remained a principal of Jobar until October, 1982 at which time Jobar made an Assignment for the Benefit of Creditors pursuant to New Jersey law.

At no time between October, 1980 and October, 1982 was Jobar, to the best of Tilghman B. Frey's knowledge, engaged in the handling of hazardous waste. Tilghman B. Frey was on the site on a daily basis and never observed that company engaging in the handling of hazardous waste.

In January, 1983, Frey Industries, Inc. (a new company) bought the assets of Jobar in a judicial sale.

At that point in time Frey was not still aware of the fact that a hazardous waste facility permit had been issued to Jobar. At no time since 1980 has Frey Industries or its predecessor, Jobar, been actually involved in the storing or handling of hazardous waste. For this reason, Frey Industries objects to being forced to create and effectuate a closure plan which relates to materials on site which were not put on the site by either Jobar or Frey. The large vats on the second and third floors of one of the buildings on the premises were abandoned on the site by Pittsburg Plate Glass, Inc. (now known as PPG Industries), the prior owner and occupant of the site. It is the position of Frey Industries that the prior owner of the industrial establishment (i.e. PPG) should be responsible for the closure plan.

In fact, PPG abandoned the entire complex and the present owner of the facility bought the facility from the City of Newark at a real estate tax sale from the City of Newark.

The site is an abandoned site as that term is defined in the New Jersey Spill Compensation Act ("Spill Act") and should be cleaned up by either PPG or by public funding under the "Spill Act".

(b) Frey contends that it has never been a hazardous waste facility as that term is defined in N.J.S.A.

7:26-1.4 and that it has never operated a hazardous waste facility at block 614 - lot 1, 29 Riverside Ave., City of Newark, New Jersey. Further, the vats in question were abandoned on the site by PPG.

(c) See paragraph (a) above.

(d) Frey objects to the entire concept that it is responsible for presenting a closure plan and therefore objects to each and every finding of fact contained in the order as well as the requirements of DEP for furnishing a closure plan.

Frey Industries reserves the right to supplement this Notice of Hearing. This Notice of Hearing is being submitted to protect Frey Industries' rights pursuant to N.J.S.A. 52:14B-1 et seq., N.J.S.A. 13:1E-9, N.J.S.A. 52:14B-9(b) and N.J.A.C. 1:1--6.1(b).

COLE, GEANEY, YAMNER & BYRNE  
Attorneys for Frey Industries  
and Tilghman B. Frey,  
Petitioners

By 

GARY S. REDISH

Date: April 9, 1987